SUPREME COURT, U. S.

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In The

Supreme Court of the United States

October Term, 1969

No. 593

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,

Plaintiffs-Appellants,

vs.

MARI LTD., an Illinois corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,

Defendants-Appellees.

On Appeal from a Decision of a Three-Judge Court of the District Court of the Northern District of Illinois, Eastern Division

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment of a three-judge court, of the District Court of the Northern District of Illinois, Eastern Division, entered on June 27, 1969. The plaintiffs sought a declaration that the Illinois "tax deed" statute was unconstitutional. The court declared the statutory scheme "extremely harsh", and acknowledged that it resulted in a "windfall" to private speculators through use of state confiscatory power. However, the court upheld the statute in the face of an attack under the due process provision of the Fourteenth Amendment, holding that the matter of such "harsh" legislation was a legislative and not a judicial question. (Appendix A)

Thus this case presents a substantial federal constitutional question not previously decided by this Court:

> Whether under an Illinois statute that provides for payment of delinquent real estate taxes by a stranger a state may permit confiscation for the benefit of such private party of the entire parcel of property, (including any value in excess of the delinquency and a premium to the tax payers) merely because the owner fails to make a timely redemption.

The court below, relied solely on a misapprehension of this Court's opinion in *Nelson* v. *New York,* 352 U.S. 103 (1956). In that case this Court upheld a statutory tax deed system because it met the requirements of due process as it provided a means for excess value over the delinquency to go to the benefit of the property owner.

This Court has jurisdiction to review the decision of the three-judge court on direct appeal under Title 28 United States Code Section 1253 and Section 2101(a), as applied in *United States* v. *Georgia Public Service Comm'n.,* 371 U.S. 285, 287 (1963), *Idlewild* v. *Bon Voyage Liquor Corp.* v. *Epstein,* 370 U.S. 713, 715 (1961).

QUESTIONS PRESENTED

1. Whether the Illinois "tax deed" statute is invalid as allowing confiscation of property without an opportunity for just compensation.
2. Whether such a statute violates equal protection of the laws where no other tax delinquency gives rise to confiscatory power for the benefit of a private person, and where the amount of the confiscation is unrelated to the tax delinquency.

STATUTES INVOLVED

Smith-Hurd Illinois Annotated Statutes, Ch. 120, Sections 726, 734, and 747 (Appendix B).

STATEMENT OF THE CASE

Plaintiffs in 1964 failed to pay some five hundred dollars in real estate taxes on their $16,000 home. A "tax buyer" paid the delinquent taxes in 1966, and under an Illinois statutory scheme, received a deed to the entire property in 1969, after the plaintiffs failed to redeem the delinquent taxes. Sections 726, 734, and 747, read together as a statutory scheme, make no provision by public sale or otherwise for satisfaction of the tax delinquency alone, but instead allow the state's confiscatory powers to be used to award the entire property to the tax buyer if there is no redemption.

Yet the record shows that the incentive for the tax buyer to put the property back on the tax rolls is interest on his payment (under Illinois law up to 48% on his investment), and not the promise of the property itself.

The statutory scheme works this way: property that is delinquent for two years is "sold" subject to redemption within two years. The "buyer" does not make his purchase at a public sale, with the proceeds above the delinquency to the owner. Instead he bids only what premium (called a penalty to the owners) he will accept upon redemption. Although he can "bid" to accept less,

the statute entitles him to 12% for 6 months or delinquency after the "purchase", 24%, 36% and 48%, for each of the succeeding six months. However if there is no redemption, the buyer or his assign gets a deed —whatever the value of the property, and whatever the value of the surplus over the amount of the tax delinquency. There is no way under the Illinois statute for an owner who is unable to redeem to obtain his equity above his tax debt.[1]

The tax buyer, here, pursuant to a wide spread practice in the field, before expiration of the redemption period sold its interest in plaintiffs' home to a real estate speculator. When plaintiffs failed to redeem, the speculator paid subsequent taxes and obtained a deed by court order. He then sought to evict plaintiff from the home. Plaintiff filed suit under 28 U.S.C.A. § 1331, first for injunctive relief, and then for declaratory judgment that the Illinois statute was unconstitutional. The suit was filed as a class action on behalf of all persons similarly situated. The District Court determined that there was a substantial federal question at issue, granted temporary injunctive relief to plaintiff, and ordered the convening of a three-judge court.

The three-judge court took the case on the pleadings —there was no dispute as to the facts. The court agreed that the Illinois statutory scheme was "extremely harsh", and created a private "wind fall". However the court de-

[1] In those cases where a tax buyer pays delinquent taxes on property that its mortgaged, the security holder generally causes a redemption. However, the scheme involved here where the entire property is confiscated occurs almost solely where the property is owned free and clear, often by widows or persons who are "land poor" and unable to redeem.

cided that a home owner who could not afford to redeem his delinquent taxes within the two year statutory period could instead sell his home within that time. The court did not consider the practical difficulties of selling under such circumstances, or the fact that the Illinois statute applies even to incompetent owners.

The Court below thereby ignored this point: Upon the homeowner's failure or inability to sell he forfeits his entire equity above his tax delinquency, which is conveyed by state power to a private person. Despite this fact, the three-judge court left the matter to the legislature for improvement and dismissed the complaint for failure to state a claim. Plaintiff filed timely notice of appeal and the parties agreed between themselves to maintain possession of the property in status quo pending determination of this appeal on behalf of all of the class members of homeowners involved.

ARGUMENT

This Court has consistently upheld the power to confiscate property to pay delinquent taxes but only where there is an opportunity for the delinquent debtor to recover the value of his property that exceeds his debt, even if it becomes too late for him to redeem the property itself. *Nelson* v. *New York,* 352 U.S. 103 (1956), *Slater* v. *Maxwell,* 75 U.S. 268 (1867) and thereby the requirements of due process of law are met. If the owner does not choose to avail himself of the opportunity to receive the surplus, the government may be entitled to the full value of the property, *Nelson* v. *New York,* (*supra*).

Under Illinois law there is no means whatsoever for a delinquent owner who cannot redeem to obtain the surplus value of his property. The court below termed this a "harsh" law, termed it a "wind fall" to the tax buyer, but misapprehended *Nelson* v. *New York* to reach its result. It is clear that this Court would not have reached the result it did in that case on the Illinois scheme, "But we do not have here a statute which absolutely precludes an owner from obtaining surplus proceeds." *Nelson, supra,* at p. 110. Thus, this is a case of first impression, squarely presenting the Court with the question:

> Is a statute which absolutely precludes an owner from obtaining surplus proceeds constitutional?

Alternatively, is such a statute valid where

> (a) there is no rational relationship between the tax delinquency and the confiscation, or between the tax buyer's incentive to put the property back in the tax rolls, which is interest, and the state's scheme, which is to grant him the entire property, and

(b) there is no other tax delinquency in state or federal law that permits confiscation beyond a tax debt without an opportunity for just compensation.

The Fifth Amendment mandate has been imposed on the states as an element of due process under the Fourteenth Amendment. *Chicago, Burlington & Quincy R. Co.* v. *Chicago*, 166 U.S. 226, 236 (1897). As this court stated in the *Chicago, Burlington and Quincy* decision, the requirement of just compensation is based on concepts of "natural equity"—a sense of what is fair. 166 U.S. at 236. So also, the whole concept of due process, both substantive and procedural, is based on our "American ideal of fairness". *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954); *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123, 162, 163 (1951).

What could be more offensive to this basic sense of fairness than to allow a state to deprive a family of a sixteen thousand dollar investment and to give that investment to a real estate speculator in return for five hundred dollars. The sense of injustice is heightened by the fact that giving such windfalls to real estate speculators are not necessary to the accomplishment of Illinois' goal of speedy, efficient revenue collection. As stated above, the principal inducement for paying another person's tax debt to the state is the high penalty provided by statute. Illinois could well afford a system by which tax purchasers engaged in open bidding which had some relation to the then existing market value of the property and still provided for substantial penalties. Under such a system the tax purchaser need not actually pay the amount bid in excess of the tax liability until the time for redemption had passed. The debtor

who was able to redeem would thus not have to pay an exorbitant redemption price. If the property was not redeemed, the tax purchaser would then pay the debtor the surplus over the tax liability and penalties.

The gross injustice inflicted by the Illinois statute in this case is not an uncommon occurrence. Under this system hundreds of property owners lose their entire interest in their property every year, and a few real estate speculators obtain substantial windfalls.

It is submitted that the court below failed to recognize the historic premises of fairness embodied in the constitutional requirements of just compensation and due process. There is no other explanation for countenancing such a grossly unfair practice in the face of such specific constitutional protection.

For the foregoing reasons, we believe that the question presented by this appeal is substantial and of broad public importance. The court should take jurisdiction and declare the Illinois statutory scheme unconstitutional.

Respectfully submitted,

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APPENDIX A

Judgment of the District Court

IN THE UNITED STATES DISTRICT COURT
Northern District Of Illinois
Eastern Division

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,
Plaintiffs,

vs. No. 69 C 898

MARI LTD., an Illinois corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,
Defendants.

Before KILEY, Circuit Judge, and PERRY and DECKER, District Judges.

Per Curiam:

Plaintiffs Louis and Doretta Balthazar challenge the constitutionality of the Illinois statutes which authorize real property tax deeds.[1] Although the General Assembly has recently made minor changes in the legislation, the general statutory scheme has remained unaltered since 1872. Defendants include alleged systematic purchasers of delinquent property and the state judicial officers who are responsible for administering the statutes.

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[1] Although a majority of states enforce the payment of real estate taxes by public sale, five states apparently have legislation similar to that in Illinois. See page 3 *infra*. Generally, there is a ceiling on the bidding, so that potential purchasers can only compete by bidding the least penalty (or interest). See Ariz. Rev. Stat. § 42-393 *et seq.* (1956); Fla. Stat. §§ 194.01-194.63 (1958); Mich. Stat. §§ 7.104-7.123 (1960); N.J. Stat. §§ 54:5-19—54:5-31 (1960); S.D. Code §§ 65-2761—65-2779 (1962).

A three-judge district court was convened pursuant to 28 U.S.C. § 2284.[2] Asking that the complaint be dismissed, defendants maintain that plaintiffs fail to state a cause of action.[3]

The annual Illinois sale of tax delinquent real estate is commenced by the County Collector's publication of the tax delinquent list which specifies when application for a judgment of sale will be made to the Circuit Court. On that date, the Circuit Court sets a time for filing objections. If no objections are submitted, the Court then enters a judgment of sale. At least five days prior to the actual sale, the County Collector notifies each delinquent tax debtor by mail of the date on which the sale will begin. The real estate is then offered to the public by parcels. Bidding is restricted to the amount of overdue taxes and interest. The successful competitor is the bidder who permits the owner to redeem for the least penalty (interest) which cannot exceed 12% for each six months or fraction thereof during the two year redemption period.

Rather than receiving title to the land, the tax buyer obtains a certificate of purchase.[4] Within not more than five nor less than three months before the redemption

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[2] Under 28 U.S.C. § 1331, jurisdiction exists because a federal question is involved. See, *e.g.*, *Georgia R. Co.* v. *Redwine*, 342 U.S. 299, 304 (1952); *Schneider* v. *District of Columbia*, 117 F. Supp. 705, 718 (D. D.C. 1953).

[3] Mr. Robert S. Cushman submitted a brief as amicus curiae, urging dismissal of the complaint. The amicus brief has been considered only as representative of the views of Interstate Bonding Corporation, a company which apparently purchases land at tax sales and often resells certificates of purchase to certain of the defendants. When requesting leave to participate in this action, Mr. Cushman acknowledged his association with Interstate Bonding Corporation and openly stated that he would support the constitutionality of the legislation.

[4] See, *e.g.*, 1967 Ill. Rev. Stat. Ch. 120 ¶ 729:

> "The county clerk shall make out and deliver to the purchaser of any lands or lots sold as aforesaid a certificate of purchase, . . . describing the land or lots sold as the same was described in the delinquent list . . ."

period expires, the tax purchaser may file a petition in the Circuit Court requesting a tax deed. The tax purchaser must also serve notice of the filing and of the expiration date for redemption on the owner by mail. If the owner fails to redeem within the two years, the tax buyer may obtain a tax deed from the County Clerk. 1967 Ill. Rev. Stat. Ch. 120 §§ 706, 711, 726, 729, 744, 747 & 749.

Rather than attempting to purchase real estate, bidders normally seek the penalty-interest. During the redemption period, the interest may total as much as 48% of the bid price. Since the owner can redeem by merely paying the delinquent taxes and interest, valuable land is routinely redeemed. In the rare case when an owner fails to redeem, however, the purchaser may obtain the property for a fraction of its market value, thus gaining as a windfall all "surplus value" which exceeds the land's tax and interest liabilities.

The Balthazars claim that when their property was sold at a tax sale, they were deprived of the due process of law,[5] as guaranteed by the Fourteenth Amendment.[6] Plaintiffs assert that tax delinquent real property can-

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[5] The Supreme Court's recent garnishment decision, *Sniadack* v. *Family Finance Corp.*, 37 L.W. 4520, is inapplicable. "We deal here with wages—a specialized type of property presenting distinct problems in our economic system." 37 L.W. 4520.

[6] Relying upon Supreme Court condemnation cases, plaintiffs also maintain that they were deprived of "just compensation" for their property. See, *e.g.*, *United States* v. *Miller*, 317 U.S. 369 (1943); *Cincinnati* v. *Vester*, 281 U.S. 439 (1930); *Dohany* v. *Rogers*, 281 U.S. 362 (1930); *Brown* v. *United States*, 263 U.S. 78 (1923), *Chicago, Burlington and Quincy R. Co.* v. *Chicago*, 166 U.S. 226 (1897). These cases are inapplicable. Rather than taking private property for a public purpose, Illinois is here collecting taxes which are admittedly overdue. *Bell's Gap Railroad* v. *Pennsylvania*, 134 U.S. 232, 239 (1890), declared that:

> "The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law, when it is executed according to customary forms and established usages . . ."

not be sold by the state to a private purchaser at a tax sale unless there is a provision for unrestricted public bidding based on the real estate's value.[7] The Illinois statutes, in contrast, limit the bidding to the total of the overdue taxes, interest, and penalties.

The purpose of a public sale, however, is to provide land owners with an opportunity to protect their real estate investment, even though their taxes may be in arrears. So long as owners have this opportunity, state legislation meets the due process requirements of the Fourteenth Amendment.[8] Thus, the Supreme Court recently held that states only need to give property owners adequate notice of their delinquency and of the foreclosure proceedings, explaining that:

> "What the City of New York has done is to foreclose real property for charges four years delinquent and, in the absence of timely action to redeem or to recover any surplus, retain the property or the entire proceeds of its sale. We hold that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings."[9]

Nelson v. *New York City*, 352 U.S. 103, 110 (1956).[10]

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[7] For example, the existing Illinois system could be modified so that a public sale at the end of the redemption period recovered the property's surplus value for the original owner. Such a law would protect delinquent taxpayers who failed to act during the redemption period.

[8] The Supreme Court has frequently upheld the constitutionality of tax delinquency statutes which do not automatically provide for a public sale of the property. See, *e.g.*, *Kentucky Union* v. *Kentucky*, 219 U.S. 140 (1911); *King* v. *Mullins*, 171 U.S. 404 (1898). Under specified circumstances, the statutes considered in the preceding cases permitted landowners to obtain a public sale. But the states required property owners to assume the initiative, as does the Illinois legislation's provision for a redemption period in which landowners may protect their investment from forfeiture.

[9] Since New York may retain the full value of seized property, any state such as Illinois may elect to sell the land to anyone who is willing to pay the overdue taxes.

The Illinois redemption period permits delinquent landowners to protect their investments because at any time during the two years they may convey the property to a purchaser, subject to the outstanding certificate of purchase. Since potential buyers may then redeem, the sellers can negotiate a purchase price which includes the surplus value. In fact, the challenged statutes favor those landowners who are likely to be in arrears, either because they are poor or because they lack ready cash. Two years afford property owners ample opportunity to raise enough money to redeem or to canvass prospective buyers for the highest possible purchase price. In contrast, at a forced judicial sale, real estate is often sold for substantially less than its apparent market value.

Furthermore, the Illinois statutes are supported by the General Assembly's unassailable purpose to collect in an efficient manner all overdue real estate taxes. The bidding restrictions which are peculiar to Illinois and five other states[11] similarly promote a legitimate legislative goal—to facilitate redemption by delinquent taxpayers. If the competitors at the tax sale bid on the property's market value, a landowner would have to raise as much money as the highest bid in order to redeem. Moreover, the existing bidding system tends to depress the penalty-interest rate, thus protecting delinquent taxpayers from excessive charges.

In their complaint, the plaintiffs also ask this Court to invalidate a private agreement executed by the Balthazars in favor of one of the defendants. While there may be ancillary federal jurisdiction to determine the issue, we decline to exercise that jurisdiction since the

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[10] The challenged New York statutes authorized strict foreclosure unless a property owner submitted timely proof that his land's value substantially exceeded the tax due. The plaintiffs before the Supreme Court failed to respond to foreclosure notices and thus lost their property even though the unpaid charges totaled less than 2% of the real estate's market value ($65 due on a $6,000 parcel, and $814.50 due on a second lot assessed at $46,000). See 352 U.S. 105-106 and 109-110.

[11] See note 1 *supra*.

plaintiffs' primary grievance fails to state a cause of action. Similarly, we do not decide any questions that plaintiffs may wish to raise concerning the procedural aspects of the Illinois tax deed statutes. If they so desire, the plaintiffs may present the procedural issues and the private agreement to the state courts for possible relief.

In conclusion, the Illinois tax delinquency statutes allow all real estate owners to recover the surplus value of their land. During the two year period of redemption, the owners can simply sell the property to a private purchaser subject to the tax certificate. The Illinois legislation is constitutional since delinquent landowners, including the plaintiffs, are adequately notified of their tax deficiencies and of any tax sale or foreclosure.

Unfortunately, the Illinois system severely penalizes all real estate owners who fail to redeem. The total forfeiture seems extremely harsh when overdue taxes amount to only two or three percent of the property's value.[12] But oppressive statutes must be tempered by the legislature, not the courts. In *Nelson* v. *New York City*, 352 U.S. 103, 110-111 (1956), the Supreme Court concluded that:

> "It is contended that this is a harsh statute. The New York Court of Appeals took cognizance of this claim and spoke of the 'extreme hardships' resulting from the application of the statute in this case. But it held, as we must, that relief from the hardship imposed by a state statute is the responsibility of the state legislature and not of the courts, unless some constitutional guarantee is infringed."

Accordingly, an order has been entered today dismissing the complaint for failure to state a cause of action.

/s/ Roger N. Kiley
United States Circuit Judge
/s/ J. S. Perry
/s/ Bernard M. Decker
United States District Judges

Dated: June 27, 1969.

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[12] See note 10 *supra*.

APPENDIX B

Statutes Involved

§ 726. *What bid accepted*

The person at such sale offering to pay the amount due on each tract or lot for the least percentage thereon as penalty, shall be the purchaser of such tract or lot: Provided, that no bid shall be accepted for a penalty exceeding twelve per cent (12%) of the amount of such tax or special assessment. Smith-Hurd Anno. Stat., (1967) Ch. 120.

§ 734. *Time and condition of redemption*

Real property sold under the provisions of this Act may be redeemed at any time before the expiration of 2 years from the date of sale, by payment in legal money of the United States to the county clerk of the proper county, the amount for which the same was sold, together with the amount of the penalty bid at such sale, unless the property has been purchased pursuant to Section 272 of this Act, in which event the penalty bid shall be 12%, if redeemed at any time before the expiration of 6 months from the day of sale; if between 6 and 12 months, the amount for which the same was sold, together with twice the amount of the penalty bid; if between 12 and 18 months, the amount for which the same was sold, together with 3 times the amount of the penalty bid; if between 18 months and 2 years, the amount for which the same was sold, together with 4 times the amount of the penalty bid at said sale. The person redeeming shall also pay the amount of all taxes and special assessments accruing after such sale with 7% penalty thereon, for each year or portion thereof intervening between the time of the payment of the subsequent tax or special assessment and the time of redemption, in all cases where the purchaser at the tax sale, or his assignee, pays such subsequent tax or special assessment after it has become delin-

quent or, after the holder of the certificate of purchase has filed a petition for a tax deed pursuant to Section 266 of this Act; also, all fees paid to the registrar of titles of the proper county incident to registering tax certificates in compliance with "An Act concerning land titles," approved May 1, 1897, as heretofore and hereafter amended, and it is the duty of the county clerk to include in the certificate of redemption the amount of the subsequent taxes, special assessments and fees of the registrar of titles paid by the purchaser or holder of the tax certificate: Provided, however, that the county clerk shall not be required to include any subsequent taxes, special assessments or fees of the registrar of titles in his certificate of redemption, nor shall the payment thereof be a charge upon the land sold for taxes, unless the purchaser, assignee, or holder of the tax certificate of sale shall have filed and have posted by the county clerk on the tax judgment, sale, redemption and forfeiture record, before redemption, an official, original or duplicate receipt for the payment of such subsequent taxes, special assessments or fees of the registrar of titles, and it shall be the duty of the tax collector and registrar of titles to furnish such duplicate receipts. The person redeeming shall also pay all costs and expenses of receivership pursuant to Section 253a of this Act to the extent that such costs and expenses exceed any income from the property in question, provided such costs and expenditures have been approved by the court appointing such receiver and provided that a certified copy of such order of approval is filed and posted by the county clerk on the tax judgment, sale, redemption and forfeiture record before redemption. In the event that income should exceed expenditures, such net income is to be deposited with the clerk of the court ordering the tax sale and shall be distributed upon court order to the owner or owners of the property in question in the proportions as determined by said court.

In the event that the property in question shall not be redeemed, no deficiency judgment shall be taken on ac-

count of said receivership proceedings, against the owner or owners of the property.

Such real property may also be redeemed after the expiration of 2 years from the date of sale, until expiration of the extended period of redemption, by payment in legal money of the United States to the county clerk, of the amount for which the said property was sold, the penalties provided herein for the 2 years after sale together with interest thereafter at 6% per annum on the face amount of such tax sales, and subsequent taxes, special assessments, fees of the registrar of titles and costs and expenses of receivership paid by the purchaser as herein provided, and advertising fees and $5 costs. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property sold under the provisions of this Act in the same manner and under the terms specified in this Section for the redemption of other real property; and redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited.

As amended 1957, July 9, Laws 1957, p. 2281, § 1; 1963, Aug. 9, Laws 1963, p. 2699, § 1; 1967, July 26, Laws 1967, p. 2128, § 1. Smith-Hurd Anno. Stat., (1967) Ch. 120.

TAX DEEDS, REDEMPTIONS, SALES IN ERROR

§ 747. *Petition for issuance of tax deed—Filing fee—Notice—Order—Fee of clerk—Effect of deed—Writ of assistance—Appeal—Liberal construction*

At any time within 5 months prior to the expiration of the time of redemption from the sale of any real estate for non-payment of taxes or special assessments, pursuant to judgment and order of sale on the County Collector's application for judgment and order of sale under Section

225 of this Act, the purchaser or his assignee may file a petition in the circuit court in the same proceeding wherein the judgment of sale was entered upon which the sale was had, praying that the court direct the county clerk to issue a tax deed if the real estate is not redeemed from the sale. Such petition shall be accompanied by a filing fee of $15. Notice of the fact of filing the petition and the date on which the petitioner intends to make application for an order on the petition that a deed issue if the real estate is not redeemed from the sale shall be given to occupants, owners and persons interested in the real estate in the same manner as provided in Section 263, except that only one publication is required. The notice to occupants and the notice by publication shall be given not less than 3 months prior to the date fixed for making application that a deed issue. The purchaser or his assignee may, if he desires, insert in the notice or notices required by Section 263 the fact of filing the petition for a tax deed and the date on which he intends to apply in the circuit court for an order for a deed if the real estate is not redeemed from the sale, in which case the notice provided by this Section is not required. The county clerk shall be notified of the filing of the petition and any person owning or interested in the real estate may, if he desires, appear in the proceeding. If the time of redemption expires and the real estate has not been redeemed from the sale and all taxes and special assessments which became due and payable subsequent to the sale have been paid and all forfeitures and sales which occur subsequent to the sale have been redeemed and the notices required by law have been given and the petitioner has complied with all the provisions of law entitling him to a deed, the court shall so find and shall enter an order directing the county clerk on the production of the certificate of purchase and a certified copy of the order, to issue to the purchaser or his assignee a tax deed. However, the court shall insist on strict proof of notice and, in the event due diligence is claimed, shall inquire into the facts of diligence, and shall require

further that the evidence relative thereto be transcribed in all cases including default matters, and such transcript shall be made a part of the court order. The county clerk is entitled to a fee of $5 for the issuance of the deed. The clerk may not include in such a deed more than one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where several such lots, blocks, tracts or pieces of land are owned by one party or person. If the court refuses to enter an order directing the county clerk to execute and deliver the tax deed, because of the failure of the purchaser to fulfill any of the above provisions, it shall order the return of the purchase price forthwith as in case of sales in error in all cases where the purchaser, or his assignee has made a bona fide attempt to comply with the statutory requirements for the issuance of the tax deed. The court may, and upon application therefor shall, issue a writ of assistance to put the grantee in possession of the real estate and may enter such orders and issue such writs as may be necessary or desirable to maintain the grantee in possession of the real estate. Tax deeds issued pursuant to this Section are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Section 72 of the "Civil Practice Act", approved June 23, 1933, as heretofore or hereafter amended, in the same manner, upon the same grounds and to the same extent as may be had under that Section with respect to final orders, judgments and decrees in other proceedings and the court shall consider defenses relating to questions of the notices required by Section 263 and the proof presented in the hearing required by this Section. This Section shall be liberally construed so that tax deeds herein provided for shall convey merchantable title. Tax deeds issued pursuant to this Section are subject to Section 266b of this Act. Smith-Hurd Anno. Stat., (1967) Ch. 120.